

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

VICTAR SHIPLEY,)	
)	
Plaintiff,)	
)	
v.)	Civ. Action No. 08-110-GMS
)	
WARDEN RAPHAEL WILLIAMS,)	
GENE BINKLEY, AND M.D. RALPH)	
SMITH,)	
)	
Defendants.)	

MEMORANDUM

The plaintiff, Victar Shipley (“Shipley”), an inmate at the Howard R. Young Correctional Institution (“HRYCI”), Wilmington, Delaware, filed this lawsuit pursuant to 42 U.S.C. § 1983. (D.I. 2.) He appears *pro se* and was granted permission to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. (D.I. 6.) The court now proceeds to review and screen the complaint pursuant to 28 U.S.C. § 1915 and § 1915A.

I. BACKGROUND

Shipley alleges that on August 28, 2007, he received medical care for a boil. The next day he was taken off the pod and told by the defendant M.D. Binkley (“Dr. Binkley”) not to submit any more sick call slips. Shipley was taken to the infirmary and told by the defendant Dr. Smith that he had a staff infection. Shipley was returned to his pod where the condition worsened. On September 2, 2007, Dr. Binkley told Shipley he had MRSA (i.e., methicillin-resistant staphylococcus aureus) and that he would be placed in isolation. Shipley has been in isolation since September. He alleges that he has had no contact with his family members or anyone from “the law firm,” and is only allowed one shower every two weeks. He alleges that he

“was not treated like a human.” From this statement, it appears that Shipley is no longer in isolation. Shipley seeks damages for improper confinement in segregation and “particularly bad conditions.”

II. STANDARD OF REVIEW

When a litigant proceeds in forma pauperis, 28 U.S.C. § 1915 provides for dismissal under certain circumstances. When a prisoner seeks redress from a government defendant in a civil action, 28 U.S.C. § 1915A provides for screening of the complaint by the court. Both 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b)(1) provide that the court may dismiss a complaint, at any time, if the action is frivolous, malicious, fails to state a claim upon which relief may be granted or seeks monetary relief from a defendant immune from such relief. An action is frivolous if it “lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989).

In performing the court’s screening function under § 1915(e)(2)(B), the court applies the standard applicable to a motion to dismiss under Fed. R. Civ. P. 12(b)(6). *Fullman v. Pennsylvania Dep’t of Corr.*, No. 4:07CV-000079, 2007 WL 257617 (M.D. Pa. Jan. 25, 2007) (citing *Weiss v. Cooley*, 230 F.3d 1027, 1029 (7th Cir. 2000)). The court must accept all factual allegations in a complaint as true and take them in the light most favorable to plaintiff. *Erickson v. Pardus*, –U.S.–, 127 S.Ct. 2197, 2200 (2007); *Christopher v. Harbury*, 536 U.S. 403, 406 (2002). A complaint must contain “‘a short and plain statement of the claim showing that the pleader is entitled to relief,’ in order to ‘give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” *Bell Atl. Corp. v. Twombly*, –U.S.–, 127 S.Ct. 1955, 1964 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)); Fed. R. Civ. P. 8. A complaint does not need detailed factual allegations, however, “a plaintiff’s obligation to provide the ‘grounds’ of

his ‘entitlement to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Id.* at 1965 (citations omitted). The “[f]actual allegations must be enough to raise a right to relief above the speculative level on the assumption that all of the allegations in the complaint are true (even if doubtful in fact).” *Id.* (citations omitted).

Shipley is required to make a “showing” rather than a blanket assertion of an entitlement to relief. *Phillips v. County of Allegheny*, 515 F.3d 224, 232 (3d Cir. 2008). “[W]ithout some factual allegation in the complaint, a claimant cannot satisfy the requirement that he or she provide not only “fair notice,” but also the “grounds” on which the claim rests. *Id.* (citing *Twombly*, 127 S.Ct. at 1965 n.3). Therefore, “‘stating . . . a claim requires a complaint with enough factual matter (taken as true) to suggest’ the required element.” *Id.* at 235 (quoting *Twombly*, 127 S.Ct. at 1965 n.3). “This ‘does not impose a probability requirement at the pleading stage,’ but instead ‘simply calls for enough facts to raise a reasonable expectation that discovery will reveal evidence of’ the necessary element.” *Id.* at 234. Because Shipley proceeds *pro se*, his pleading is liberally construed and his complaint, “however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers. *Erickson v. Pardus*, –U.S.–, 127 S.Ct. 2197, 2200 (2007) (citations omitted).

III. DISCUSSION

Shipley’s main complaint is that he was placed in isolation after it was determined he had MRSA. Initially, the court notes that inmates have “no legitimate statutory or constitutional entitlement” to any particular custodial classification even if a new classification would cause that inmate to suffer a “grievous loss.” *Moody v. Daggett*, 429 U.S. 78, 88 n. 9 (1976).

Moreover, neither Delaware law nor Delaware Department of Correction regulations create a liberty interest in a prisoner's classification within an institution. *See* Del. Code Ann. tit. 11, § 6529(e). “As long as the conditions or degree of confinement to which [a] prisoner is subjected is within the sentence imposed upon him and is not otherwise violative of the Constitution, the Due Process Clause does not in itself subject an inmate's treatment by prison authorities to judicial oversight.” *Hewitt v. Helms*, 459 U.S. 460, 468 (1983) (quoting *Montanye v. Haymes*, 427 U.S. 236, 242 (1976)).

It has thus been determined that the transfer of a prisoner from one classification is unprotected by “the Due Process Clause in and of itself,” even though the change in status involves a significant modification in conditions of confinement. *Hewitt*, 459 U.S. at 468 (citation omitted); *Moody v. Daggett*, 429 U.S. 78 (1976); *see also Lott v. Arroyo*, 785 F. Supp. 508, 509 (E.D. Pa. 1991) (plaintiff transferred from group home to correctional facility had no constitutionally enforceable right to participate in work release program); *Brown v. Cunningham*, 730 F. Supp. 612 (D. Del. 1990) (plaintiff's transfer from general population to administrative segregation, without being given notice and opportunity to challenge it, was not violation of plaintiff's liberty interest).

Shipley's placement in isolation did not violate his due process rights. It appears from the complaint that he was placed there to protect others from contracting MRSA. The decision to place Shipley in isolation in administrative segregation cannot be viewed as falling outside the scope of “the sentence imposed upon him [or] otherwise violative of the Constitution.” Rather, it appears his placement was a medical decision.¹ Plaintiff cannot state a claim a claim for

¹Shipley names two physicians as defendants, but does not raise a medical needs claim.

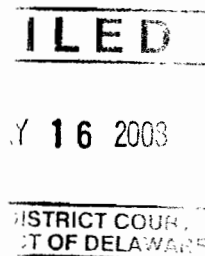
violation of a liberty interest created by the Due Process Clause or State law. His claim has no arguable basis in law or in fact and, therefore, will be dismissed as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b)(1).

IV. CONCLUSION

For the above stated reasons the court finds that the complaint fails to state a claim upon which relief may be granted. Therefore, the court will dismiss the complaint pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b)(1). Amendment of the Complaint would be futile. *See Alston v. Parker*, 363 F.3d 229 (3d Cir. 2004); *Grayson v. Mayview State Hosp.*, 293 F.3d 103, 111 (3d Cir. 2002); *Borelli v. City of Reading*, 532 F.2d 950, 951-52 (3d Cir. 1976). An appropriate order will be entered.


CHIEF, UNITED STATES DISTRICT JUDGE

May 16, 2008
Wilmington, Delaware



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SMITH,)	
)	
Defendants.)	

ORDER

At Wilmington this 16th day of May, 2008, for the reasons set forth in the Memorandum issued this date, the complaint is **dismissed** pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b)(1). Amendment of the complaint would be futile.


CHIEF, UNITED STATES DISTRICT JUDGE

